



STATE OF MAINE
DEPARTMENT OF ENVIRONMENTAL PROTECTION
STATE HOUSE STATION 17 AUGUSTA, MAINE 04333

BOARD ORDER

IN THE MATTER OF

PENOBSCOT NURSING HOME)	ADMINISTRATIVE CONSENT
ELRCARE MAINE, LLC)	AGREEMENT
PENOBSCOT, HANCOCK COUNTY)	AND ENFORCEMENT ORDER
MAINE)	

This Agreement by and among Penobscot Nursing Home, ("PNH"), ELRCARE Maine, LLC, the Maine Board of Environmental Protection, (the "Board"), and the State of Maine Attorney General is entered into pursuant to 38 M.R.S.A., Section 347-A(1) and in accordance with the Department of Environmental Protection's ("the Department") Consent Agreement Policy, as amended

The parties agree as follows:

- 1 Penobscot Nursing Home is a corporation which is organized and exists under the laws of the State of Maine, and which operates a 98-bed nursing home in Penobscot, Maine. ELRCARE Maine, LLC is a limited liability company which is organized and exists under the laws of the State of Maine.
- 2 The Board has regulatory authority over the activities described hereinafter.
- 3 PNH has a Waste Discharge Conditional Permit (#W002139) issued by the Department on December 9, 1994, for the discharge of 7,400 gallons per day ("gpd") of treated domestic waste water to the tidewaters of Northern Bay, Class SB. The Conditional Permit was issued for a term of ten years. Special Condition 2 of the Conditional Permit states that the permit will expire 6 months after the offer of grant money for removal of the system. An offer of grant money was made on July 1, 1996. However, after a design report for removal of PNH and the other two nearby dischargers was submitted to the Department, the Department decided to place the combined project on hold due to limited availability of funds. Because of mounting evidence of water quality impacts from the PNH discharge and malfunctioning of the PNH treatment system, the Department has decided that the removal project must move forward immediately.
- 4 ELRCARE Maine, LLC has a contract for sale with PNH to purchase the nursing home. ELRCARE Maine, LLC also has applied for an operational license for the nursing home that will enable it to operate the facility immediately upon completion of the sale. The sale will not proceed until the operational license is issued. Until such time as the MEPDES Permit is transferred from PNH to ELRCARE Maine, LLC, or the Permit is surrendered to the Department, both PNH and ELRCARE Maine, LLC will be jointly and severally liable for compliance with the Permit.

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5. PNH's Waste Discharge Conditional Permit limits the discharge of fecal coliform bacteria ("bacteria") to a monthly geometric mean of 15 colonies per 100 mL ("col/100mL") and a daily maximum of 15 col/100mL. PNH is required to sample and report once per quarter for bacteria. During the following quarters, PNH discharged waste water with bacteria concentrations in excess of its permit limits

Quarter Ending	Daily Maximum
Permit Limit	15 col/100mL
December 1994	>240*
March 1995	>240*
June 1995	>240*
September 1995	>240*
December 1995	>1200*
March 1996	>1200*
June 1996	>1200*
September 1996	>1200*
December 1996	>1200*
March 1997	>1200*
June 1997	>1200*
September 1997	>1200*
September 1998	>1200*
December 1998	1200
March 1999	>1200*
September 1999	200*
December 1999	10000*
March 2000	14500*
September 2000	6100*
December 2000	7100*
March 2001	230,000*
September 2001	<50*
December 2001	490*
March 2002	57,000*
June 2002	7800*
September 2002	84,000
December 2002	540,000
March 2003	57,000
June 2003	600
September 2003	11000
December 2003	1600
September 2004	140
December 2004	200
September 2005	200
December 2005	20,000

* - The values with asterisks are taken from original laboratory report forms

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6. PNH's Waste Discharge Conditional Permit limits the discharge of Biochemical Oxygen Demand ("BOD") to a monthly average of 30 milligrams per liter ("mg/L") and a daily maximum of 50 mg/L. PNH is required to sample and report once per quarter for BOD. During the following quarters, PNH discharged waste water with concentration of BOD in excess of its permit limits:

Quarter Ending	Monthly Average	Daily Maximum
Permit Limits	30 mg/L	50 mg/L
December 1994	33*	
March 1995	51*	51*
June 1995	38	
December 1995	79*	79*
March 1996	78*	78*
June 1996	68*	68*
March 1997	39	
June 1997	40	
December 1997	64	64
March 1998	115	115
March 1999	39	
December 1999	38*	
March 2001	56	56
March 2002	81*	81*
June 2002	48	
September 2002	35	
December 2002	92	92
March 2003	150	150
March 2004	190	190
June 2004	54	54
September 2004	40	
December 2004	31	
March 2005	47	
December 2005	33	

* - The values with asterisks are taken from original laboratory report forms

7. PNH's Waste Discharge Conditional Permit limits the discharge of Total Suspended Solids ("TSS") to a monthly average of 30 milligrams per liter ("mg/L") and a daily maximum of 50 mg/L. PNH is required to sample and report once per quarter for TSS. During the following quarters, PNH discharged waste water with TSS concentration in excess of its monthly average permit limit

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Quarter Ending	Monthly Average
Permit Limit	30 mg/L
March 1995	31
March 1999	38
December 1999	34
March 2000	36*
March 2001	39
December 2001	31*
March 2003	48
December 2003	41
June 2004	43
March 2005	36
December 2005	34

* - The values with asterisks are taken from original laboratory report forms

8. PNH's Waste Discharge Conditional Permit limits the discharge of total residual chlorine ("chlorine") to a daily maximum of 1.0 mg/l. PNH is required to sample and report twice per week for chlorine. During the following quarters, PNH discharged waste water with chlorine concentrations in excess of its permit limit

Quarter Ending	Daily Maximum	Number of Daily Maximum Violations
Permit Limit	1.0 mg/L	
March 1994	1.1	1
September 2003	2.0	2
December 2003	3.0	16
March 2004	12.0	20
June 2004	3.0	1
September 2004	2.1	10
December 2004	1.2	3
March 2005	2.0	9
June 2005	1.6	6
September 2005	3.0	6
December 2005	3.0	12

9. The actions described in paragraphs 5, 6, 7 and 8, above, are violations of the PNH waste discharge conditional permit and Title 38 M.R.S.A., Section 414(5)
10. On July 7, 2003, The Department issued a Notice of Violation to Penobscot Nursing Home regarding the violations identified above.

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11. Maine Statutes were amended in 2003 to change the requirements for relicensing and transfer of overboard discharge licenses and conditional permits. These changes became effective on September 13, 2003. In particular, Title 38, M.R.S.A. Section 414-A(1-B)(A) now requires that all permittees provide to the Department an evaluation of alternatives to overboard discharges as part of their applications for renewal. The PNH conditional permit expired on December 9, 2004. The Department requested and received an application for renewal of this license that was signed on April 4, 2005. That application has not yet been accepted for processing, based on the need for additional information, which was outlined in a letter to PNH dated January 10, 2006.
12. This Agreement shall become effective only if it is accepted by the Board and approved by the Attorney General.
13. To resolve the violations referred to in paragraphs 5 through 8, above, Penobscot Nursing Home and ELRCARE Maine, LLC agree to:
 - A. Immediately place and maintain a sign on the shore near the outfall, clearly readable from the parking area adjacent to the outfall location, that states there is a sewage treatment plant outfall discharging at this location. This sign shall be maintained until such time as the removal of this discharge from the surface waters of the State is completed.
 - B. Prior to May 15, 2006, submit to the Department for review and approval, a draft form of an easement for the use of a portion of land owned by the Town of Penobscot as a subsurface disposal area for the waste water from PNH. Immediately upon approval by the Department, PNH shall present the draft of the easement to the Town of Penobscot, which has indicated its willingness to provide an easement to PNH for the purposes indicated in exchange for PNH preparing the easement.
 - C. Prior to October 15, 2006, submit to the Department for review and approval, detailed plans and a schedule for replacement of the existing overboard treatment system serving the nursing home with a subsurface disposal system. The new construction shall be completed according to the approved schedule, but in no event later than September 30, 2007. In the event that the easement described in paragraph B, above, is not granted by the Town of Penobscot, ELRCare shall develop a design and implementation plan under the same schedule set forth in this paragraph, for repair or replacement of the OBD system that will comply with all terms and conditions of waste discharge license W002139.
 - D. Pay to the Treasurer, State of Maine, the sum of Twenty-three Thousand Dollars (\$23,000), due immediately upon signing this agreement.
14. The Board and the State of Maine Attorney General grant Penobscot Nursing Home a release of their causes of action against Penobscot Nursing Home and any successor in interest (including, but not limited to ELRCARE Maine, LLC) for the specific violations listed in paragraphs 5-8, above, on the express condition that all actions called for in

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paragraph 13, above, are completed in accordance with the express terms and conditions of this Agreement. The release shall not become effective unless and until the above condition is satisfied

Pursuant to 38 M.R.S.A. Section 347-A(1) and the Department's Consent Agreement Policy, as amended, and based on the Agreement set forth above, the Board ORDERS Penobscot Nursing Home and ELRCARE Maine, LLC to

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IN WITNESS WHEREOF the parties have executed the Agreement consisting of 7 pages

PENOBSCOT NURSING HOME

BY: Wendell M. Dennison DATE 5/15/06
WENDELL DENNISON, Administrator

ELRCARE MAINE, LLC

By: Sifwady Ali DATE: 5/15/06
SIFWADY ALI, Manager

BOARD OF ENVIRONMENTAL PROTECTION

BY: _____ DATE _____
MATTHEW SCOTT, CHAIRMAN

SEEN AND AGREED TO.
State of Maine

BY: _____ DATE _____
CAROL BLASI, Assistant Attorney General

2006 CA 06-00006 5/15/2006